IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0068
Appellee,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
MATTHEW BAKER,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20032259

Honorable Barbara Sattler, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Diane Leigh Hunt
Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Kristine Maish
Tucson
Attorneys for Appellant

V Á S Q U E Z, Judge.

¶1 After a bench trial, the trial court found appellant Matthew Baker guilty of four felonies: possession of cocaine base for sale and simple possession of

methamphetamine, marijuana, and narcotics paraphernalia. Finding the state had failed to prove any historical prior felony convictions, the trial court sentenced Baker in October 2004 to concurrent, presumptive prison terms ranging from one to five years. He was subsequently granted leave to file this delayed appeal, in which he challenges the trial court's denial of his motion to suppress evidence and the sufficiency of the evidence to support his conviction for possessing cocaine base for sale. We affirm.

¶2 In considering Baker's first argument that the trial court erred in denying his pretrial motion to suppress, "we look only at the evidence presented during the suppression hearing and draw all reasonable inferences in favor of upholding the court's factual determinations." *State v. Guillory*, 199 Ariz. 462, ¶ 9, 18 P.3d 1261, 1264 (App. 2001). "We view the facts and evidence in the light most favorable to sustaining the trial court's ruling, but we review questions of law de novo." *State v. Chavez*, 208 Ariz. 606, ¶ 2, 96 P.3d 1093, 1094 (App. 2004). Absent "clear and manifest error," we will not interfere with a trial court's ruling on a motion to suppress. *State v. Hyde*, 186 Ariz. 252, 265, 921 P.2d 655, 668 (1996); *see also State v. Jones*, 203 Ariz. 1, ¶ 8, 49 P.3d 273, 277 (2002) ("Clear and manifest error . . . is really shorthand for abuse of discretion."), *supp. op.*, 205 Ariz. 445, 72 P.3d 1264 (2003).

¶3 Testimony at the suppression hearing established that three sheriff's deputies went to a local motel in response to a report by motel staff who had observed "quite a bit of foot traffic coming from the rooms." The deputies knocked on the door of a room

occupied by Baker and a female companion and announced, "Sheriff's Department." As soon as Baker opened the door, the deputies smelled a strong odor of burning marijuana. Asked if he had been smoking marijuana, Baker replied that he had.

¶4 One deputy then asked Baker if they could enter the room. In response, "Baker stepped aside and motioned with his arm," allowing the officers to enter. When the same deputy asked if they could search the room, Baker consented, saying "something to the effect of, go ahead." In a dresser drawer, the deputies found a bag containing a usable amount of marijuana. Elsewhere in the room, the deputies found several small Ziploc bags containing what proved to be methamphetamine residue.[1]

¶5 All three deputies and Baker testified at the suppression hearing. At its conclusion, the trial court denied the motion to suppress evidence, finding believable the officers' testimony that Baker had consented to the search of his motel room. The court suppressed Baker's admission that he had been smoking marijuana because, it found, he had technically been in custody when the deputies asked him the question[2] without having yet informed him of his right to remain silent pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

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[1]As later established at trial, the search also revealed four scales, a quantity of cocaine base, and cash in various denominations.

[2]Two of the deputies testified that, once they had smelled the odor of burning marijuana in his motel room, Baker was not free to leave.

¶6 A warrantless search is lawful if the defendant consents to it voluntarily. *State v. Schad*, 129 Ariz. 557, 563, 633 P.2d 366, 372 (1981). The voluntariness of a defendant's consent is a question of fact dependent upon the totality of the circumstances. *State v. Paredes*, 167 Ariz. 609, 612, 810 P.2d 607, 610 (App. 1991). "The state must establish by clear and positive evidence that consent to search was freely and intelligently given." *Id.* We will uphold a trial court's finding that a defendant voluntarily consented to a search unless the court's finding is clearly erroneous. *State v. Swanson*, 172 Ariz. 579, 583, 838 P.2d 1340, 1344 (App. 1992).

¶7 As we noted above, the trial court expressly found credible the officers' testimony that Baker had consented to the search of his motel room. Baker testified at the suppression hearing that, based on previous experience with the criminal justice system, he had known before the deputies ever arrived at his motel room door that he did not have to agree to let them search.[3] In fact, he claimed, he did not consent. On appeal, however, he contends the presence of three uniformed deputies at his motel room door "created a coercive atmosphere" in which he did not feel free to refuse them access. Thus, he intimates, he may have consented to the search, but his "'consent' . . . was equivocal at best."

¶8 As the state observes, Baker's testimony at the suppression hearing and his argument on appeal are at odds. Regardless, "[w]hen there is a conflict between the

[3]Baker admitted having several previous arrests for drug offenses and acknowledged that he had talked to the deputies even though he knew his *Miranda* rights and thus knew he was not required to answer any questions.

testimony of the appellant and that of police officers, the resolution is for the trial court." *State v. Tapia*, 159 Ariz. 284, 288, 767 P.2d 5, 9 (1988). The court resolved those conflicts here in favor of the state, accepting the deputies' testimony that Baker had voluntarily consented to the search. Because the trial court's findings are supported by the record, they are not clearly erroneous, and the court did not abuse its discretion in denying Baker's motion to suppress.

¶9 Baker's other claim is that the evidence was insufficient to support his conviction for possessing cocaine base for sale. He argues that other people "were associated with" the motel room he was occupying in which the cocaine was found, apparently challenging the fact that he had possessed the cocaine at all. And he contends that, because "no ledgers or any other type of 'bookkeeping' documentation associated with selling drugs" was found, there was no proof that he had knowingly possessed the drugs "*for sale.*"

¶10 Every conviction must be supported by "substantial evidence." Ariz. R. Crim. P. 20(a), 17 A.R.S. "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). When considering the sufficiency of the evidence, "this court does not consider whether it would reach the same conclusion as the [fact-finder], but whether there is a complete absence of probative facts to support its conclusion." *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

We "will reverse only if there is a complete absence of 'substantial evidence' to support the conviction." *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996), *quoting State v. Atwood*, 171 Ariz. 576, 597, 832 P.2d 593, 614 (1992), *disapproved on other grounds by State v. Nordstrom*, 200 Ariz. 229, ¶ 25, 25 P.3d 717, 729 (2001). "[I]f reasonable minds can differ on inferences to be drawn" from the evidence, the evidence is substantial. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶11 Clearly there was "more than a mere scintilla" of evidence to support the trial court's finding that Baker had knowingly possessed the cocaine base. *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). Sheriff's detective Dominquez testified that, after advising Baker of his rights pursuant to *Miranda*, Dominquez asked Baker if the narcotics in the motel room belonged to him. Baker answered that the methamphetamine and cocaine were both his but were only for personal use. That testimony supplied substantial evidence to support the finding that Baker had possessed the cocaine. Moreover, as the state notes, defense counsel in closing argument conceded that Baker possessed the drug, and, in his reply brief, Baker acknowledges his own admission.

¶12 On the issue whether his possession was for sale rather than for personal use, there was likewise substantial evidence supporting the inference that Baker possessed the cocaine for sale. Baker stipulated that the weight of the cocaine base was 44.11 grams or 44,110 milligrams and that the minimum usable quantity is fifteen milligrams. The amount in his possession, therefore, constituted 2,940 usable doses. That quantity, in combination

with the other items found in Baker's motel room—small scales, a razor blade for cutting and plastic bags for packaging the cocaine, cellular telephones, and $773 cash in bills of differing denominations—permitted a reasonable inference that Baker possessed the cocaine base for sale. *See State v. Jung*, 19 Ariz. App. 257, 261-62, 506 P.2d 648, 652-53 (1973) (Notwithstanding lack of direct evidence of a sale transaction, "[t]he quantity of narcotics found in defendant's possession, its packaging, its location, and the paraphernalia for measuring and weighing were all circumstances from which it could properly be inferred that it was possessed for sale rather than for personal use."). In its ruling from the bench, the trial court specifically cited "the scales, the packaging, the money, the denominations, the amount of cocaine base that was found," and the lack of anything indicating the cocaine was for personal use as the basis for its finding.

¶13 We find neither error nor abuse of discretion in the trial court's denial of Baker's motion to suppress evidence, and the record contains substantial evidence supporting his conviction for possession of cocaine base for sale. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Because neither issue raised on appeal warrants reversal, we affirm the judgment of convictions and sentences.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge